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**DEPARTMENT OF HOMELAND SECURITY**

**2 CFR Part 3002**

**Federal Emergency Management Agency**

**44 CFR Parts 13, 78, 79, 152, 201, 204, 206, 207, 208, 304, 360, and 361**

**[Docket ID: FEMA-2015-0012]**

**RIN 1601-AA71**

**Adoption of Uniform Administrative Requirements, Cost Principles, and Audit  
Requirements for Federal Awards; States and Tribal Mitigation Planning Regulations  
Change**

**AGENCY:** DHS, Federal Emergency Management Agency.

**ACTION:** Final Rule.

**SUMMARY:** On December 19, 2014, all Federal award-making agencies, including the Department of Homeland Security (DHS) and its component, the Federal Emergency Management Agency (FEMA), published a joint interim final rule implementing the Office of Management and Budget (OMB)'s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. DHS and FEMA now adopt, with one change, the interim final rule as final. The change restores language in the FEMA State and Tribal mitigation planning regulations that was inadvertently removed by the interim final rule.

**DATES:** Effective Date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****I. Background**

On November 23, 2009, the President issued Executive Order 13520 (“Reducing Improper Payments and Eliminating Waste in Federal Programs”). On February 28, 2011, the President issued a Presidential Memorandum (“Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments”). These documents directed OMB to work with Executive Branch agencies to potentially establish reforms on Federal grant policies.

In response, on October 27, 2011, OMB established the Council on Financial Assistance Reform, an interagency group of Executive Branch officials tasked with creating an accountable structure to coordinate financial assistance, streamline Federal grant-making requirements, ease administrative burdens, and strengthen Federal fund oversight to reduce risks of waste, fraud, and abuse.

On February 28, 2012, OMB published an Advanced Notice of Proposed Guidance. See 77 FR 11778. On February 1, 2013, OMB published a Notice of Proposed Guidance. See 78 FR 7282. Both documents solicited public comment on ideas for reforming the requirements that govern the management of Federal financial assistance awards. On December 26, 2013, OMB published the Uniform Guidance, which added Part 200 (“OMB Guidance”) to Title 2 (“Grants

and Agreements”) of the Code of Federal Regulations. See 79 FR 75871. The Uniform Guidance included:

- The consolidation of eight previously-issued OMB Circulars on grants and awards;
- A uniform set of administrative requirements for grant recipients;
- A focus on grantee performance over compliance for accountability;
- An emphasis on efficient uses of information technology and shared services;
- A uniform set of cost principles that treats costs transparently and consistently;
- A limitation on allowable costs in order to make best uses of Federal resources;
- The standardization of business processes using consistent data element definitions;
- An emphasis on oversight by reviewing risks prior to awarding grants; and
- A uniform set of audit requirements that prioritizes identifying the risks of fraud, waste, and abuse.

The Uniform Guidance required Federal agencies to implement the policies and procedures applicable to Federal awards by promulgating a regulation to be effective by December 26, 2014. *See* 2 CFR 200.110.

On December 19, 2014, all Federal award-making agencies promulgated a joint interim final rule implementing the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. See 79 FR 75871. In the interim final rule, DHS adopted OMB’s Guidance as DHS’s own via 2 CFR Part 3002, and FEMA removed 44 CFR Part 13 (FEMA’s grant administration regulations). Also, throughout Title 44, FEMA replaced all references to Part 13 with corresponding references to 2 CFR Parts 200 and 3002, as applicable.

During the joint interim final rule's comment period, OMB received 61 comments from individuals and organizations. No comments OMB received referenced DHS or FEMA. Thus, DHS and FEMA are adopting the interim final rule as final, with one change.

## **II. Change to December 19, 2014 Interim Final Rule**

FEMA's mitigation planning regulations are located at 44 CFR Part 201, and set forth instructions on the policies and procedures for State, Tribal, and local hazard mitigation planning. Hazard mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. The purpose of hazard mitigation planning is to identify policies and actions that can be implemented over the long-term to reduce risk and future losses. State, Indian Tribal, and local governments are required to develop a hazard mitigation plan as one of the conditions for establishing eligibility for certain types of Federal non-emergency disaster assistance and FEMA mitigation grants.

The December 19, 2014 joint interim final rule contained an inadvertent error to FEMA's Standard State Mitigation Planning regulations at 44 CFR 201.4(c)(7) and to FEMA's Tribal Mitigation Planning regulations at 44 CFR 201.7(c)(6). Prior to the December 19, 2014 joint interim final rule, these sections read as published in Title 44 of the Code of Federal Regulations, revised as of October 1, 2014.

In the December 19, 2014 joint interim final rule, FEMA revised the first sentences of 44 CFR 201.4(c)(7) and 44 CFR 201.7(c)(6) with a general citation to 2 CFR Parts 200 and 3002. However, FEMA unintentionally removed the second sentence of these sections and thus inadvertently removed a procedure by which States and Indian Tribal governments amend their mitigation plans when necessary to reflect changes in State, Indian Tribal, or Federal laws or regulations. In this final rule, FEMA is reinserting this provision.

While FEMA previously referenced 44 CFR 13.11(d) in both 44 CFR 201.4(c)(7) and in 44 CFR 201.7(c)(6), FEMA, as noted above, removed 44 CFR Part 13 and replaced all references to Part 13 with corresponding references to 2 CFR Parts 200 and 3002, as applicable. There are no corresponding pinpoint cites in 2 CFR Part 200 or Part 3002 that replace the requirements found at 44 CFR 13.11(d). Thus, FEMA cannot carry this reference over to the revised regulations. FEMA regulations have included the procedure for States and Indian Tribal governments since 2002 and 2007, respectively, to amend their plans to reflect changes in State, Indian Tribal, or Federal laws, statutes and regulations, as applicable. As FEMA is simply reinserting an inadvertently removed and longstanding provision, this change does not create new program requirements. FEMA also describes these provisions in various guidance materials and is revising the references as applicable.<sup>1</sup>

### **III. Regulatory Analyses**

#### **A. Executive Order 12866 Determination**

Pursuant to Executive Order 12866, as amended, OMB's Office of Information and Regulatory Affairs (OIRA) has designated this final rule to be not significant.

#### **B. Administrative Procedure Act**

The Administrative Procedure Act (APA) provides that an agency may dispense with notice and comment rulemaking procedures when it promulgates an interpretive rule, a general statement of policy, or a rule of agency organization, procedure, or practice. See 5 U.S.C. 553 (b)(A). DHS is issuing this change to reinstate FEMA procedures inadvertently removed in the interim final rule, related to ensuring mitigation plan compliance with applicable laws and

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<sup>1</sup> State Multi-Hazard Planning Guidance, effective through March 5, 2016, <https://www.fema.gov/media-library/assets/documents/103285>; State Mitigation Plan Review Guide, effective on March 6, 2016, <https://www.fema.gov/media-library/assets/documents/101659>; Tribal Multi-Hazard Planning Guidance, <https://www.fema.gov/media-library/assets/documents/18355>.

regulations. Thus, DHS finds that this part of the final rule relates to agency procedures and is exempt from notice and comment.

In addition, the APA provides that an agency may dispense with notice and comment rulemaking procedures when an agency, for good cause, finds those procedures are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553 (b)(B). DHS is reinserting two provisions concerning mitigation plan compliance with applicable laws and regulations, a requirement that was already present in 44 CFR 201.4(c)(7) and 44 CFR 201.7(c)(6). Thus, DHS finds that notice and comment is unnecessary and that this part of the final rule is exempt from notice and comment.

### **C. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) requires an agency that is issuing a final rule to provide a final regulatory flexibility analysis or to certify that the rule will not have a significant economic impact on a substantial number of small entities. This final rule imposes no cost as the common interim rule implemented OMB final guidance issued on December 26, 2013, and did not have a significant economic impact beyond the impact of the December 2013 guidance.

### **D. Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 et seq.), requires Federal agencies to assess the effects of their discretionary regulatory actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. As the final rule would not have an impact greater than \$100,000,000 or more in any one year, it is not an unfunded Federal mandate.

### **E. Paperwork Reduction Act (PRA) of 1995**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 3506; 5 CFR Appendix A.1)(PRA), DHS and FEMA reviewed this final rule and have determined that there are no new collections of information contained therein.

#### **F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments,” (65 FR 67249, Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials. DHS and FEMA have determined that this final rule does not have any Tribal implications.

#### **G. Executive Order 13132 Determination**

DHS and FEMA have determined that this final rule does not have any federalism implications, as required by Executive Order 13132.

#### **List of Subjects**

#### **2 CFR Part 3002**

Accounting, Administrative practice and procedure, Adult education, Aged, Agriculture, American Samoa, Bilingual education, Blind, Business and industry, Civil rights, Colleges and

universities, Communications, Community development, Community facilities, Copyright, Credit, Cultural exchange programs, Educational facilities, Educational research, Education, Education of disadvantaged, Education of individuals with disabilities, Educational study programs, Electric power, Electric power rates, Electric utilities, Elementary and secondary education, Energy conservation, Equal educational opportunity, Federally affected areas, Government contracts, Grant programs, Grant programs-agriculture, Grant programs-business and industry, Grant programs-communications, Grant programs-education, Grant programs-energy, Grant programs-health, Grant programs-housing and community development, Grant programs-social programs, Grant administration, Guam, Home improvement, Homeless, Hospitals, Housing, Human research subjects, Indians, Indians-education, Infants and children, Insurance, Intergovernmental relations, International organizations, Inventions and patents, Loan programs, Loan programs social programs, Loan programs-agriculture, Loan programs-business and industry, Loan programs-communications, Loan programs-energy, Loan programs-health, Loan programs-housing and community development, Manpower training programs, Migrant labor, Mortgage insurance, Nonprofit organizations, Northern Mariana Islands, Pacific Islands Trust Territories, Privacy, Renewable Energy, Reporting and recordkeeping requirements, Rural areas, Scholarships and fellowships, School construction, Schools, Science and technology, Securities, Small businesses, State and local governments, Student aid, Teachers, Telecommunications, Telephone, Urban areas, Veterans, Virgin Islands, Vocational education, Vocational rehabilitation, Waste treatment and disposal, Water pollution control, Water resources, Water supply, Watersheds, Women.

**44 CFR Part 13**



Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

**44 CFR Part 78**

Flood insurance, Grant programs.

**44 CFR Part 79**

Flood insurance, Grant programs.

**44 CFR Part 152**

Fire prevention, Grant programs, Reporting and recordkeeping requirements.

**44 CFR Part 201**

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

**44 CFR Part 206**

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs-housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

**44 CFR Part 207**

Administrative practice and procedure, Disaster assistance, Grant programs, Reporting and recordkeeping requirements.

**44 CFR Part 208**

Disaster assistance, grant programs.

**44 CFR Part 304**

American Samoa, Civil defense, Grant programs-National defense, Guam, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands.

#### **44 CFR Part 360**

Civil defense, Disaster assistance, Education, Grant programs-education, Intergovernmental relations, Reporting and recordkeeping requirements.

#### **44 CFR Part 361**

Disaster assistance, Grant programs-housing and community development, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 2 CFR Part 3002 and 44 CFR Parts 13, 78, 79, 152, 201, 204, 206, 207, 208, 304, 360, and 361, which was published in the **Federal Register** at 79 FR 75871 on December 19, 2014, is adopted as final with the following changes:

### **Title 44 — Emergency Management and Assistance**

#### **PART 201—MITIGATION PLANNING**

1. The authority citation for Part 201 continues to read as follows:

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

2. Section 201.4 is amended by adding a sentence to the end of paragraph (c)(7) to read as follows:

#### **§ 201.4 Standard State Mitigation Plans.**

\* \* \* \* \*

(c) \* \* \*

(7) \* \* \* The State will amend its plan whenever necessary to reflect changes in State or Federal statutes and regulations.

\* \* \* \* \*

3. Section 201.7 is amended by adding a sentence to the end of paragraph (c)(6) to read as follows:

§ 201.7 Tribal Mitigation Plans.

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \* The Indian Tribal government will amend its plan whenever necessary to reflect changes in Tribal or Federal laws and statutes.

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Dated: September 22, 2015

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**Jeh Charles Johnson**

Secretary of Homeland Security

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